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**VIA E-FILING and
HAND DELIVERY**

The Honorable Richard G. Andrews
United States District Court
for the District of Delaware
844 N. King Street
Wilmington, DE 19801

Re: Amgen Inc., et al. v. Hospira, Inc., C.A. No. 15-839 (RGA)

Dear Judge Andrews:

This firm represents Hospira, Inc. (“Hospira”) in the above-captioned matter. We write in response to Amgen’s July 7, 2016 letter. (D.I. 63).

Amgen’s letter mischaracterizes the recent *Amgen v. Apotex* decision and Hospira’s motion to dismiss. In particular, Amgen alleges that the *Apotex* decision “specifically rejected the arguments Hospira has made....” However, Amgen’s arguments have no bearing on the issue presented in Hospira’s motion to dismiss -- whether the BPCIA confers a private right of action for alleged violations of paragraph (8)(A). In fact, the Federal Circuit explicitly acknowledged that the private right of action issue was not raised by *Apotex*, and the panel opinion did not even cite to the controlling Supreme Court precedent which was extensively briefed and argued by the parties here on Hospira’s motion to dismiss.

Amgen’s citation to a portion of the *Apotex* decision which did not adopt Apotex’s argument that 42 U.S.C. § 262(D)(9) provides the exclusive remedy for an alleged violation of paragraph (8)(A) misses the mark regarding whether the panel grappled with the private right of action issue before this Court. Whether or not the remedy provided in paragraph (9) of the BPCIA is an exclusive remedy simply does *not* solve Amgen’s problem that the BPCIA does not contain “rights-creating language” conferring a private right of action on Amgen for alleged violations of paragraph (8)(A). The Federal Circuit panel, which cannot overrule or deviate from the controlling Supreme Court precedent in any event, avoided the private right of action issue and noted that the issue was not before it. Thus, the *Apotex* decision does not address the basis for Hospira’s pending motion to dismiss, which is ripe for decision.

Respectfully submitted,



Dominick T. Gattuso (# 3630)

cc: Counsel of Record (by CM/ECF and E-mail)